

Introduced by Senators Ducheny, Dunn, and Figueroa
(Coauthor: Assembly Member Jones)

February 2, 2005

An act to amend Sections 1365.1 and 1367.1 of, to add Sections 1367.4 and 1367.5 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 137, as introduced, Ducheny. Common interest developments: assessments.

Existing law defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

Existing law authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January

1, 2006. The bill would provide that when an association of a common interest development seeks to collect delinquent assessments of less than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds \$2,500. The bill would repeal provisions authorizing the owner of a separate interest to pay assessments that are in dispute in full under protest and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days.

The bill would permit an association of a common interest development seeking to collect delinquent regular or special assessments of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an executive meeting of the board, by a majority vote, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect dispute resolution or alternative dispute resolution procedures, under specified circumstances. The association would be prohibited from recording a lien or initiating a foreclosure action without participating in those procedures if so requested by the owner. If it is determined through dispute resolution or alternative dispute resolution that an association has filed a lien for a delinquent assessment in error, the association would be required to reverse specified charges and take other corrective actions.

The bill would further provide that, notwithstanding any law to the contrary, a foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days. The bill would establish a minimum bid of 65% of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified. The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.

The bill would also authorize an association created to manage a common interest development to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the association.

The bill would make other related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE ASSESSMENTS AND FORECLOSURE”

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND ~~NONJUDICIAL~~ FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur

1 *either as a result of a court action, known as judicial foreclosure*
2 *or without court action, often referred to as nonjudicial*
3 *foreclosure. For liens perfected on and after January 1, 2006, an*
4 *association may not use judicial or nonjudicial foreclosure to*
5 *enforce that lien if the amount of the delinquent assessments or*
6 *dues, exclusive of any late charges, fees, attorney's fees, interest,*
7 *and costs of collection, is less than two thousand five hundred*
8 *dollars (\$2,500). For delinquent assessments or dues in excess of*
9 *two thousand five hundred dollars (\$2,500), an association may*
10 *use judicial or nonjudicial foreclosure subject to the conditions*
11 *set forth in Section 1367.4 of the Civil Code. When using judicial*
12 *or nonjudicial foreclosure, the association records a lien on the*
13 *owner's property. The owner's property may be sold to satisfy*
14 *the lien if the amounts secured by the lien is are not paid.*
15 ~~Assessments become delinquent 15 days after they are due,~~
16 ~~unless the governing documents of the association provide for a~~
17 ~~longer time.~~ (Sections 1366 and, 1367.1, and 1367.4 of the Civil
18 Code)

19 In a *judicial or nonjudicial foreclosure*, the association may
20 recover assessments, reasonable costs of collection, reasonable
21 attorney's fees, late charges, and interest. The association may
22 not use nonjudicial foreclosure to collect fines or penalties,
23 except for costs to repair common areas damaged by a member
24 or a member's guests, if the governing documents provide for
25 this. (Sections 1366 and 1367.1 of the Civil Code)

26 The association must comply with the requirements of Section
27 1367.1 of the Civil Code when collecting delinquent
28 assessments. If the association fails to follow these requirements,
29 it may not record a lien on the owner's property until it has
30 satisfied those requirements. Any additional costs that result from
31 satisfying the requirements are the responsibility of the
32 association. (Section 1367.1 of the Civil Code)

33 At least 30 days prior to recording a lien on an owner's
34 separate interest, the association must provide the owner of
35 record with certain documents by certified mail. ~~Among these~~
36 ~~documents, the association must send, including~~ a description of
37 its collection and lien enforcement procedures and the method of
38 calculating the amount. It must also provide an itemized
39 statement of the charges owed by the owner. An owner has a

1 right to review the association's records to verify the debt.
2 (Section 1367.1 of the Civil Code)

3 If a lien is recorded against an owner's property in error, the
4 person who recorded the lien is required to record a lien release
5 within 21 days, and to provide an owner certain documents in
6 this regard. (Section 1367.1 of the Civil Code)

7 The collection practices of the association may be governed by
8 state and federal laws regarding fair debt collection. Penalties can
9 be imposed for debt collection practices that violate these laws.

11 PAYMENTS

13 When an owner makes a payment, he or she may request a
14 receipt, and the association is required to provide it. On the
15 receipt, the association must indicate the date of payment and the
16 person who received it. The association must inform owners of a
17 mailing address for overnight payments. (Section 1367.1 of the
18 Civil Code)

19 An owner may dispute an assessment debt by ~~giving the board~~
20 ~~of the association a written explanation, and the board must~~
21 ~~respond within 15 days if certain conditions are met. An owner~~
22 ~~may pay assessments that are in dispute in full under protest, and~~
23 ~~then request alternative dispute resolution. (Sections 1366.3 and~~
24 ~~1367.1 of the Civil Code) submitting a written request for dispute~~
25 ~~resolution to the association as set forth in Article 5~~
26 ~~(commencing with Section 1368.810) of Chapter 4 of Title 6 of~~
27 ~~Division 2 of the Civil Code. In addition, an association may not~~
28 ~~initiate a foreclosure without participating in alternative dispute~~
29 ~~resolution with a neutral third party as set forth in Article 2~~
30 ~~(commencing with Section 1369.510) of Chapter 7 of Title 6 of~~
31 ~~Division 2 of the Civil Code, if so requested by the owner.~~

32 An owner is not liable for charges, interest, and costs of
33 collection, if it is established that the assessment was paid
34 properly on time. (Section 1367.1 of the Civil Code)

36 MEETINGS AND PAYMENT PLANS

38 An owner of a separate interest that is not a ~~time-share~~
39 ~~timeshare~~ may request the association to consider a payment plan
40 to satisfy a delinquent assessment. The association must inform

1 owners of the standards for payment plans, if any exist. (Section
2 1367.1 of the Civil Code)

3 The board of directors must meet with an owner who makes a
4 proper written request for a meeting to discuss a payment plan
5 when the owner has received a notice of a delinquent assessment.
6 These payment plans must conform with the payment plan
7 standards of the association, if they exist. (Section 1367.1 of the
8 Civil Code)”
9

10 SEC. 2. Section 1366.3 of the Civil Code is repealed.

11 ~~1366.3. (a) The exception for disputes related to association~~
12 ~~assessments in subdivision (b) of Section 1354 shall not apply if,~~
13 ~~in a dispute between the owner of a separate interest and the~~
14 ~~association regarding the assessments imposed by the~~
15 ~~association, the owner of the separate interest chooses to pay in~~
16 ~~full to the association all of the charges listed in paragraphs (1) to~~
17 ~~(4), inclusive, and states by written notice that the amount is paid~~
18 ~~under protest, and the written notice is mailed by certified mail~~
19 ~~not more than 30 days from the recording of a notice of~~
20 ~~delinquent assessment in accordance with Section 1367 or~~
21 ~~1367.1; and in those instances, the association shall inform the~~
22 ~~owner that the owner may resolve the dispute through alternative~~
23 ~~dispute resolution as set forth in Section 1354, civil action, and~~
24 ~~any other procedures to resolve the dispute that may be available~~
25 ~~through the association.~~

26 ~~(1) The amount of the assessment in dispute.~~

27 ~~(2) Late charges.~~

28 ~~(3) Interest.~~

29 ~~(4) All reasonable fees and costs associated with the~~
30 ~~preparation and filing of a notice of delinquent assessment,~~
31 ~~including all mailing costs, and including reasonable attorney's~~
32 ~~fees not to exceed four hundred twenty-five dollars (\$425).~~

33 ~~(b) The right of any owner of a separate interest to utilize~~
34 ~~alternative dispute resolution under this section may not be~~
35 ~~exercised more than two times in any single calendar year, and~~
36 ~~not more than three times within any five calendar years. Nothing~~
37 ~~within this section shall preclude any owner of a separate interest~~
38 ~~and the association, upon mutual agreement, from entering into~~
39 ~~alternative dispute resolution for a number of times in excess of~~
40 ~~the limits set forth in this section. The owner of a separate~~

~~interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.~~

SEC. 3. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by *paragraph (3) of subdivision (c)*.

(5) *The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2.*

1 (6) *The right to request alternative dispute resolution with a*
2 *neutral third party pursuant to Article 2 (commencing with*
3 *Section 1369.510) of Chapter 7 of Part 4 of Division 2 before the*
4 *association may initiate foreclosure against the owner's separate*
5 *interest.*

6 (b) Any payments made by the owner of a separate interest
7 toward the debt set forth, as required in subdivision (a), shall first
8 be applied to the assessments owed, and, only after the
9 assessments owed are paid in full shall the payments be applied
10 to the fees and costs of collection, attorney's fees, late charges, or
11 interest. When an owner makes a payment, the owner may
12 request a receipt and the association shall provide it. The receipt
13 shall indicate the date of payment and the person who received it.
14 The association shall provide a mailing address for overnight
15 payment of assessments.

16 ~~(e) (1) An owner may dispute the debt noticed pursuant to~~
17 ~~subdivision (a) by submitting to the board a written explanation~~
18 ~~of the reasons for his or her dispute. The board shall respond in~~
19 ~~writing to the owner within 15 days of the date of the postmark~~
20 ~~of the explanation, if the explanation is mailed within 15 days of~~
21 ~~the postmark of the notice.~~

22 ~~(2)~~
23 (c) (1) (A) *Prior to recording a lien for delinquent*
24 *assessments, an association shall offer the owner and, if so*
25 *requested by the owner, participate in dispute resolution*
26 *pursuant to Article 5 (commencing with Section 1363.810) of*
27 *Chapter 4 of Title 6 of Part 4 of Division 2.*

28 (B) *Prior to initiating a foreclosure for delinquent*
29 *assessments, an association shall offer the owner and, if so*
30 *requested by the owner, shall participate in dispute resolution*
31 *pursuant to Article 5 (commencing with Section 1363.810) of*
32 *Chapter 4 of Title 6 of Part 4 of Division 2 or alternative dispute*
33 *resolution with a neutral third party pursuant to Article 2*
34 *(commencing with Section 1369.510) of Chapter 7 of Title 6 of*
35 *Part 4 of Division 2. The decision to pursue dispute resolution or*
36 *a particular type of alternative dispute resolution shall be the*
37 *choice of the owner, except that binding arbitration shall not be*
38 *available if the association intends to initiate a judicial*
39 *foreclosure.*

1 (2) *For liens recorded on or after January 1, 2006, the*
2 *decision to record a lien for delinquent assessments shall be*
3 *made only by the board of directors of the association and may*
4 *not be delegated to an agent of the association. The board shall*
5 *approve the decision by a majority vote of the board members in*
6 *an open meeting. The board shall record the vote in the minutes*
7 *of that meeting.*

8 (3) An owner, other than an owner of any interest that is
9 described in Section 11212 of the Business and Professions Code
10 that is not otherwise exempt from this section pursuant to
11 subdivision (a) of Section 11211.7, may submit a written request
12 to meet with the board to discuss a payment plan for the debt
13 noticed pursuant to subdivision (a). The association shall provide
14 the owners the standards for payment plans, if any exist. The
15 board shall meet with the owner in executive session within 45
16 days of the postmark of the request, if the request is mailed
17 within 15 days of the date of the postmark of the notice, unless
18 there is no regularly scheduled board meeting within that period,
19 in which case the board may designate a committee of one or
20 more members to meet with the owner.

21 (d) The amount of the assessment, plus any costs of collection,
22 late charges, and interest assessed in accordance with Section
23 1366, shall be a lien on the owner's interest in the common
24 interest development from and after the time the association
25 causes to be recorded with the county recorder of the county in
26 which the separate interest is located, a notice of delinquent
27 assessment, which shall state the amount of the assessment and
28 other sums imposed in accordance with Section 1366, a legal
29 description of the owner's interest in the common interest
30 development against which the assessment and other sums are
31 levied, the name of the record owner of the owner's interest in
32 the common interest development against which the lien is
33 imposed. In order for the lien to be enforced by nonjudicial
34 foreclosure as provided in subdivision (g), the notice of
35 delinquent assessment shall state the name and address of the
36 trustee authorized by the association to enforce the lien by sale.
37 The notice of delinquent assessment shall be signed by the
38 person designated in the declaration or by the association for that
39 purpose, or if no one is designated, by the president of the
40 association, and mailed in the manner set forth in Section 2924b,

1 to all record owners of the owner's interest in the common
2 interest development no later than 10 calendar days after
3 recordation. Within 21 days of the payment of the sums specified
4 in the notice of delinquent assessment, the association shall
5 record or cause to be recorded in the office of the county recorder
6 in which the notice of delinquent assessment is recorded a lien
7 release or notice of rescission and provide the owner of the
8 separate interest a copy of the lien release or notice that the
9 delinquent assessment has been satisfied. A monetary charge
10 imposed by the association as a means of reimbursing the
11 association for costs incurred by the association in the repair of
12 damage to common areas and facilities for which the member or
13 the member's guests or tenants were responsible may become a
14 lien against the member's separate interest enforceable by the
15 sale of the interest under Sections 2924, 2924b, and 2924c,
16 provided the authority to impose a lien is set forth in the
17 governing documents. It is the intent of the Legislature not to
18 contravene Section 2792.26 of Title 10 of the California Code of
19 Regulations, as that section appeared on January 1, 1996, for
20 associations of subdivisions that are being sold under authority of
21 a subdivision public report, pursuant to Part 2 (commencing with
22 Section 11000) of Division 4 of the Business and Professions
23 Code.

24 (e) Except as indicated in subdivision (d), a monetary penalty
25 imposed by the association as a disciplinary measure for failure
26 of a member to comply with the governing instruments, except
27 for the late payments, may not be characterized nor treated in the
28 governing instruments as an assessment that may become a lien
29 against the member's subdivision separate interest enforceable by
30 the sale of the interest under Sections 2924, 2924b, and 2924c.

31 (f) A lien created pursuant to subdivision (d) shall be prior to
32 all other liens recorded subsequent to the notice of assessment,
33 except that the declaration may provide for the subordination
34 thereof to any other liens and encumbrances.

35 (g) An association may not voluntarily assign or pledge the
36 association's right to collect payments or assessments, or to
37 enforce or foreclose a lien to a third party, except when the
38 assignment or pledge is made to a financial institution or lender
39 chartered or licensed under federal or state law, when acting
40 within the scope of that charter or license, as security for a loan

obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) *This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.*

SEC. 4. Section 1367.4 is added to the Civil Code, to read:

1 1367.4. (a) Notwithstanding any law or any provisions of the
2 governing documents to the contrary, this section shall apply to
3 debts for assessments that arise on and after January 1, 2006.

4 (b) An association that seeks to collect delinquent regular or
5 special assessments of an amount less than two thousand five
6 hundred dollars (\$2,500), not including any late charges, fees and
7 costs of collection, attorney's fees, or interest, may not collect
8 that debt through judicial or nonjudicial foreclosure, but may
9 attempt to collect or secure that debt in any of the following
10 ways:

11 (1) By a civil action in small claims court, pursuant to Chapter
12 5.5 (commencing with Section 116.110) of Title 1 of the Code of
13 Civil Procedure. An association that chooses to proceed by an
14 action in small claims court, and prevails, may enforce the
15 judgment as permitted under Article 8 (commencing with Section
16 116.810) of Title 1 of the Code of Civil Procedure. The amount
17 that may be recovered in small claims court to collect upon a
18 debt for delinquent assessments may not exceed the jurisdictional
19 limits of the small claims court and shall be the sum of the
20 following:

21 (A) The amount owed as of the date of filing the complaint in
22 the small claims court proceeding.

23 (B) In the discretion of the court, an additional amount
24 described in subparagraph (A) equal to the amount owed for the
25 period from the date the complaint is filed until the estimated
26 date of judgment.

27 (2) By recording a lien on the owner's separate interest upon
28 which the association may not foreclose until the amount of the
29 delinquent assessments secured by the lien, exclusive of any late
30 charges, fees and costs of collection, attorney's fees, or interest,
31 equals or exceeds two thousand five hundred dollars (\$2,500).
32 An association that chooses to record a lien under these
33 provisions, prior to recording the lien, shall offer the owner and,
34 if so requested by the owner, participate in dispute resolution as
35 set forth in Article 5 (commencing with Section 1368.810) of
36 Chapter 4.

37 (3) Any other manner provided by law, except for judicial or
38 nonjudicial foreclosure.

39 (c) An association that seeks to collect delinquent regular or
40 special assessments of an amount of two thousand five hundred

1 dollars (\$2,500) or more, not including any late charges, fees and
2 costs of collection, attorney's fees, or interest, may use judicial or
3 nonjudicial foreclosure subject to the following conditions:

4 (1) Prior to initiating a foreclosure on an owner's separate
5 interest, the association shall offer the owner and, if so requested
6 by the owner, participate in dispute resolution as set forth in
7 Article 5 (commencing with Section 1368.810) of Chapter 4 or
8 alternative dispute resolution as set forth in Article 2
9 (commencing with Section 1369.510) of Chapter 7. The decision
10 to pursue dispute resolution or a particular type of alternative
11 dispute resolution shall be the choice of the owner, except that
12 binding arbitration shall not be available if the association
13 intends to initiate a judicial foreclosure.

14 (2) The decision to initiate foreclosure of a lien for delinquent
15 assessments that has been validly recorded shall be made only by
16 the board of directors of the association and may not be delegated
17 to an agent of the association. The board shall approve the
18 decision by a majority vote of the board members in an executive
19 session. The board shall record the vote in the minutes of that
20 meeting. The board shall maintain the confidentiality of the
21 owner or owners of the separate interest by identifying the matter
22 by the parcel number of the property, rather than the name of the
23 owner or owners.

24 (3) The board shall provide personal notice to an owner of a
25 separate interest who occupies the separate interest if the board
26 votes to foreclose upon the separate interest. The board shall
27 provide written notice to an owner of a separate interest who
28 does not occupy the separate interest by first-class mail, postage
29 prepaid, at the most current address shown on the books of the
30 association.

31 (4) A nonjudicial foreclosure by an association to collect upon
32 a debt for delinquent assessments shall be subject to a right of
33 redemption. The redemption period within which the separate
34 interest may be redeemed from a foreclosure sale under this
35 paragraph ends 90 days after the sale.

36 (5) A nonjudicial or judicial foreclosure by an association to
37 collect upon a debt for delinquent assessments shall comply with
38 the following requirements:

1 (A) The minimum bid shall be at least 65 percent of the
2 appraised value, excluding any senior liens subject to which the
3 successful bidder would be taking title.

4 (B) An appraiser appropriately certified by the Office of Real
5 Estate Appraisers shall perform the exterior appraisal (using
6 Form 2055 Exterior Only Appraisal). The cost of the appraisal
7 shall be recouped at sale if the property is auctioned or at cure of
8 the default prior to sale. The appraisal shall be completed at least
9 30 days, but no more than 60 days, prior to sale unless, in the
10 event of a judicial foreclosure, the court orders a different
11 completion date.

12 (d) The limitation on foreclosure of assessment liens for
13 amounts under the stated minimum in this section does not apply
14 to assessments owed by owners of separate interests in timeshare
15 estates, as defined in subdivision (x) of Section 11112 of the
16 Business and Professions Code, or to assessments owed by
17 developers.

18 SEC. 5. Section 1367.5 is added to the Civil Code, to read:

19 1367.5. If it is determined through dispute resolution pursuant
20 to Article 5 (commencing with Section 1363.810) of Chapter 4 of
21 Title 6 of Part 4 of Division 2 or alternative dispute resolution
22 with a neutral third party pursuant to Article 2 (commencing with
23 Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2
24 that an association has recorded a lien for a delinquent
25 assessment in error, the association shall promptly reverse all late
26 charges, fees, interest, attorney's fees, costs of collection, costs
27 imposed for the notice prescribed in subdivision (a) of Section
28 1367.1, and costs of recordation and release of the lien
29 authorized under subdivision (b) of Section 1367.4, and pay all
30 costs related to the dispute resolution or alternative dispute
31 resolution.

32 SEC. 6. Section 116.540 of the Code of Civil Procedure is
33 amended to read:

34 116.540. (a) Except as permitted by this section, no
35 individual other than the plaintiff and the defendant may take
36 part in the conduct or defense of a small claims action.

37 (b) A corporation may appear and participate in a small claims
38 action only through a regular employee, or a duly appointed or
39 elected officer or director, who is employed, appointed, or

1 elected for purposes other than solely representing the
2 corporation in small claims court.

3 (c) A party who is not a corporation or a natural person may
4 appear and participate in a small claims action only through a
5 regular employee, or a duly appointed or elected officer or
6 director, or in the case of a partnership, a partner, engaged for
7 purposes other than solely representing the party in small claims
8 court.

9 (d) If a party is an individual doing business as a sole
10 proprietorship, the party may appear and participate in a small
11 claims action by a representative and without personally
12 appearing if both of the following conditions are met:

13 (1) The claim can be proved or disputed by evidence of an
14 account that constitutes a business record as defined in Section
15 1271 of the Evidence Code, and there is no other issue of fact in
16 the case.

17 (2) The representative is a regular employee of the party for
18 purposes other than solely representing the party in small claims
19 actions and is qualified to testify to the identity and mode of
20 preparation of the business record.

21 (e) A plaintiff is not required to personally appear, and may
22 submit declarations to serve as evidence supporting his or her
23 claim or allow another individual to appear and participate on his
24 or her behalf, if (1) the plaintiff is serving on active duty in the
25 United States ~~armed forces~~ *Armed Forces* outside this state, (2)
26 the plaintiff was assigned to his or her duty station after his or her
27 claim arose, (3) the assignment is for more than six months, (4)
28 the representative is serving without compensation, and (5) the
29 representative has appeared in small claims actions on behalf of
30 others no more than four times during the calendar year. The
31 defendant may file a claim in the same action in an amount not to
32 exceed the jurisdictional limits stated in Sections 116.220 and
33 116.231.

34 (f) A party incarcerated in a county jail, a Department of
35 Corrections facility, or a Youth Authority facility is not required
36 to personally appear, and may submit declarations to serve as
37 evidence supporting his or her claim, or may authorize another
38 individual to appear and participate on his or her behalf if that
39 individual is serving without compensation and has appeared in

1 small claims actions on behalf of others no more than four times
2 during the calendar year.

3 (g) A defendant who is a nonresident owner of real property
4 may defend against a claim relating to that property without
5 personally appearing by (1) submitting written declarations to
6 serve as evidence supporting his or her defense, (2) allowing
7 another individual to appear and participate on his or her behalf if
8 that individual is serving without compensation and has appeared
9 in small claims actions on behalf of others no more than four
10 times during the calendar year, or (3) taking the action described
11 in both (1) and (2).

12 (h) A party who is an owner of rental real property may appear
13 and participate in a small claims action through a property agent
14 under contract with the owner to manage the rental of that
15 property, if (1) the owner has retained the property agent
16 principally to manage the rental of that property and not
17 principally to represent the owner in small claims court, and (2)
18 the claim relates to the rental property.

19 (i) *A party that is an association created to manage a common*
20 *interest development, as defined in Section 1351 of the Civil*
21 *Code, may appear and participate in a small claims action*
22 *through a management company representative or bookkeeper*
23 *who appears on behalf of that association.*

24 (j) At the hearing of a small claims action, the court shall
25 require any individual who is appearing as a representative of a
26 party under subdivisions (b) to ~~(h)~~(i), inclusive, to file a
27 declaration stating (1) that the individual is authorized to appear
28 for the party, and (2) the basis for that authorization. If the
29 representative is appearing under subdivision (b), (c), (d), ~~or~~ (h),
30 *or (i)*, the declaration also shall state that the individual is not
31 employed solely to represent the party in small claims court. If
32 the representative is appearing under subdivision (e), (f), or (g),
33 the declaration also shall state that the representative is serving
34 without compensation, and has appeared in small claims actions
35 on behalf of others no more than four times during the calendar
36 year.

37 ~~(j)~~

38 (k) A husband or wife who sues or who is sued with his or her
39 spouse may appear and participate on behalf of his or her spouse
40 if (1) the claim is a joint claim, (2) the represented spouse has

1 given his or her consent, and (3) the court determines that the
2 interests of justice would be served.

3 ~~(k)~~

4 (l) If the court determines that a party cannot properly present
5 his or her claim or defense and needs assistance, the court may in
6 its discretion allow another individual to assist that party.

7 ~~(h)~~

8 (m) Nothing in this section shall operate or be construed to
9 authorize an attorney to participate in a small claims action
10 except as expressly provided in Section 116.530.

11 SEC. 7. Section 729.035 is added to the Code of Civil
12 Procedure, to read:

13 729.035. Notwithstanding any provision of law to the
14 contrary, the sale of a separate interest in a common interest
15 development is subject to the right of redemption within 90 days
16 after the sale if the sale arises from a foreclosure by the
17 association of a common interest development pursuant to
18 subdivision (g) of Section 1367.1 of the Civil Code, subject to
19 the conditions of Section 1367.4 of the Civil Code.